

November 11, 2016

Via email at Willaim.Goedecke@cpuc.ca.gov

William Goedecke
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Opening Comments of the California Cable & Telecommunications Association (CCTA) on Draft Resolution T-17514 (Approval of thirty-five public housing infrastructure grants under the California Advanced Services Fund's Broadband Public Housing Account totaling \$475,481).

Dear Mr. Goedecke:

Pursuant to Rule 14.5 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure and the October 28, 2016 Notice of Availability, the California Cable & Telecommunications Association (CCTA) files these comments on Draft Resolution T-17514.¹ The Draft Resolution would approve grant funding in the amount of \$1,475,481 from the California Advanced Services Fund (CASF) Broadband Public Housing Account (BPHA) for 35 projects for nine applicants. CCTA opposes the grant of funds to seven of the nine People's Self Help Housing applications inclusive to this resolution that were challenged by Cox Communications on the basis that the projects included in these applications are already wired. That these facilities are wired is undisputed by the Communications Division's Resolution, but the Resolution maintains, wrongly, that a challenge to these grants on the basis of the fact that the facility is served may be denied.² As discussed below, the Commission cannot legally provide BPHA funds to housing

¹ CCTA has been, and remains, an active party and participant in the Commission's proceedings implementing the CASF. CCTA members are cable video and broadband providers providing advanced telecommunications services in California.

² See, Draft Resolution at 6. The position that a challenge to a project on the basis that the facility is fully served raise the inevitable question regarding the purpose of
² See, Draft Resolution at 6. The position that a challenge to a project on the basis that the facility is fully served raise the inevitable question regarding the purpose of any challenge at all.

projects that are fully wired and “served” with advanced broadband service at speeds at or in excess of 6 Mbps download and 1.5 Mbps upload.

Although the Draft Resolution relies on Resolution T-17515 to review and approve applications for properties that are fully wired (Draft Resolution at 3), it also acknowledges that there is a pending application for rehearing of Resolution T-17515 filed by Charter Communications, which challenges the Commission’s award of CASF funding to publicly supported communities that are already wired and served. While the Draft Resolution maintains that it is not “prejudging” the pending application for rehearing, it fails to acknowledge that the Communications Division has already sent a letter to the housing projects challenged by Charter Communications requesting that the grant recipients delay deployment of the proposed projects while CD staff resolves Charter’s request for reconsideration. It makes little, if any sense, therefore, to continue to grant funds to projects that would not be eligible for funding, adding onto the count of projects that would necessarily need to delay deployment, until resolution of the Charter request for reconsideration.

Moreover, and more important, both Public Utilities Code Section 281 and the legislative history implementing the BPHA undermines any contention that BPHA grants can be awarded to fully served and wired projects. The July 02, 2013 hearing record in the Senate Energy, Utilities and Communications Committee clearly establishes that the BPHA was not to be used to overbuild public housing communities that are already connected. In response to a question posed by Senator Wright regarding whether the fund can be used to overbuild existing services already in place, Assembly member Bradford (the author of AB 1299 implementing the program) responded without hesitation, “No, we are not trying to overbuild infrastructure, something that was there... this is all about connecting those who are not connected.” Senator Wright also clarified, and Assembly member Bradford agreed, that once a building is connected, residents would pay the prevailing rate for the service. See July 02 hearing at approximately 32:13:

http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=1463.

Further, the Senate Energy, Utilities and Communications Committee Analysis of AB 1299 cites the April 29, 2013 informational hearing before the Assembly Utilities and Commerce Committee where, “according to estimates from the PUC and the California Emerging Technology Fund (CETF), there are about 300,000 publicly subsidized housing units in California, of which about 200,000 to 250,000 are estimated to lack broadband connections,” expressing the direct understanding in the legislative deliberations that the purpose of the BPHA fund was to build infrastructure where no infrastructure exists.³ The Senate Analysis further notes

³ The Communications Division also made it clear that connecting unconnected housing units was the goal of the BPHA. See, D. 14-12-039, Appendix A, Staff Report Proposing Rules to Implement Program Changes to the California Advanced Services Fund Initiated by AB 1299 (Staff Report), September 2014 at A11, “CD staff

that during the informational hearing, representatives from publicly supported and non-profit housing communities, situated primarily in urban areas, testified that a majority of their properties lack reliable broadband connectivity, citing the cost of building or upgrading the infrastructure and maintaining the network and inside wiring as the primary barrier to receiving broadband service. It was testimonies like this that underscored the importance of creating a fund for projects where reliable broadband was or is unavailable, and importance that surely would have been lost if the fund was designed merely to overbuild existing advanced communications facilities and services in fully wired community housing projects.

Indeed, the CASF itself was established in 2008 to provide funding for infrastructure projects that will provide broadband access to households that are unserved or underserved by an existing facilities-based provider.⁴ The CASF itself has four separate accounts, including the BPHA, and all moneys collected by the account surcharge are available to the Commission for programs administered by the Commission pursuant to the requirements of the CASF. (Pub. Util. Code Section 281 (2), including the BPHA, Pub. Util. Code 281(2)(c)(4). The expansion of the program to include the BPHA was conditions on the requirement that the expansion be accomplished pursuant to the requirements of the CASF to provide access to broadband services to an unserved or underserved household, as defined in Commission Decision 12-02-015(Pub. Util. Code Section 281 (c) (3). Nothing in the statute authorizes the Commission to fund fully served housing projects, as contemplated in Resolution T-17514, and the determination to deny the Cox challenges and issue grants to the seven challenged PSHH facilities must be reversed.

Very truly yours,

Lesla Lehtonen

estimates that the Commission can aim to connect 30,000 to 40,000 units with the \$20 million in the CASF Housing Account depending on the requirements the Commission imposes on grantees, a number that likely is far less than the number of unconnected units in the state.” The Staff Report also cites the October 3, 2013 Press Release of the author, Steven Bradford, upon the signing of his legislation, who noted that “as the 21st century economy moves online, our society is increasingly defined by those who have access to the technology and those who don’t,” adding that we cannot let certain unserved and underserved communities fall behind the rest when it comes to this critical resource.”

⁴ D.07-12-054 at 2, “We hereby create funding to encourage deployment of broadband facilities for use in provisioning advanced telecommunications (as well as voice) service in unserved and underserved areas of California. We designate this allocation of money as the California Advanced Services Fund (CASF) to be awarded as explained below.” *See also*, D. 12-02-015 at 3.

Subject Index

The Commission cannot legally provide Broadband Public Housing funds to housing projects that are fully wired and served under the definition of “served” in the CASF itself. The Cox challenged to the seven PSHH applications must be approved, and those project grants rescinded.

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Revised Findings and Ordering Paragraphs

FINDINGS:

1. On July 1, 2015, CHQ, CVCAH, HACK, HACSB, Surf and Banneker submitted applications for CASF funding. On April 1, 2016, NVCH and PSHH submitted applications for CASF funding. Cox Communications challenged seven of the nine PSHH projects inclusive to this resolution. ~~CD denied the challenges since the reasons stated in the challenges provided were not supported in D. 14-12-039 or in P.U. Code 281 (h).~~ No challenges were received for the remaining project proposals. The challenges by Cox show that those PSHH

- project applications are fully served and are ineligible for an award from the BPHA account within the CASF, pursuant to Section 281 (2)(c) (4) .
2. ~~Based on its review, CD determined that all 35 projects meet eligibility requirements. CD further determined that all 35 projects qualify for funding under D. 14-12-039.~~

ORDERING PARAGRAPHS

1. THE COMMISSION STAFF SHALL AWARD THE REQUESTED GRANT AMOUNTS REQUESTED FOR THE PROJECTS LISTED IN TABL 1:

* ~~\$363,805~~ to People's Self-Help Housing for ~~nine~~ two projects.